

[DISCUSSION DRAFT]

108TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SESSIONS (for himself and Mr. DAVIS of Tennessee) introduced the following bill; which was referred to the Committee on

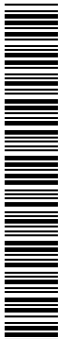
A BILL

To improve homeland security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Visitor Information
5 and Security Accountability (VISA) Act”.



1 **TITLE I—BETTER MANAGEMENT**
2 **OF WHO AND WHAT ENTERS**
3 **THE UNITED STATES**

4 **SEC. 101. UNITED STATES VISITOR AND IMMIGRANT STA-**
5 **TUS TECHNOLOGY (US-VISIT) PROGRAM.**

6 (a) The Secretary of Homeland Security, in collabo-
7 ration with cabinet officials from US-VISIT stakeholder
8 departments and agencies, shall—

9 (1) establish and charter an executive body,
10 chaired by the Secretary's designees, cochaired by
11 the leadership from key stakeholder departments
12 and agencies, and composed of appropriate senior-
13 level representatives from the Department of Home-
14 land Security and each stakeholder organization, to
15 advise and direct the US-VISIT program; and

16 (2) direct this executive body to immediately
17 take steps to—

18 (A) ensure that the human capital and fi-
19 nancial resources are expeditiously provided to
20 establish a fully functional and effective US-
21 VISIT program office and associated manage-
22 ment capability;

23 (B) clarify the operational context within
24 which US-VISIT must operate; and



1 (C) decide whether proposed US-VISIT in-
2 crements will produce mission value commensu-
3 rate with costs and risks and disclose to the
4 Congressional Committees of Jurisdiction
5 planned actions based on the body's decisions.

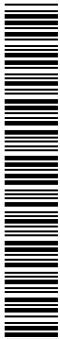
6 (b) The Secretary of Homeland Security, through the
7 Under Secretary for Border and Transportation Security,
8 shall direct the US-VISIT Program Director to expedi-
9 tiously establish an effective program management capa-
10 bility, including immediately—

11 (1) defining program office positional roles, re-
12 sponsibilities, and relationships;

13 (2) developing and implementing a human cap-
14 ital strategy that provides for staffing these posi-
15 tions with individuals who have the requisite core
16 competencies (knowledge, skills, and abilities);

17 (3) developing and implementing a plan for sat-
18 isfying key Software Engineering Institute acquisi-
19 tion management controls, to include acquisition
20 planning, solicitation, requirements development and
21 management, project management, contractor track-
22 ing and oversight, evaluation, and transition to sup-
23 port;

24 (4) developing and implementing a risk man-
25 agement plan and ensuring that all high risks and



1 their status are reported regularly to the executive
2 body and Congressional Committees of Jurisdiction;

3 (5) defining performance standards for each
4 US-VISIT system increment that are measurable
5 and reflect the limitations imposed by relying on ex-
6 isting systems to form these system increments; and

7 (6) developing an analysis of incremental pro-
8 gram cost, benefits, and risks, and providing this
9 analysis to the executive body, to assist it in the
10 body's deliberations and decisionmaking.

11 (c) The Secretary of Homeland Security shall ensure
12 that any officer or employee of the Department of Home-
13 land Security or the Department of State requiring access
14 to the data contained in the US-VISIT system for any
15 lawful purpose under the Immigration and Nationality Act
16 is properly authorized to do so, including access for pur-
17 poses of representation of the Department of Homeland
18 Security in removal proceedings under section 240 of such
19 Act and adjudication of applications for benefits under
20 such Act.

21 **SEC. 102. SECURE IDENTIFICATION DOCUMENTS.**

22 (a) Section 215 of the Immigration and Nationality
23 Act (8 U.S.C. 1185) is amended:

24 (1) by adding new subsection (g) to read as fol-
25 lows:



1 “(g) SECURE IDENTIFICATION DOCUMENTS.—

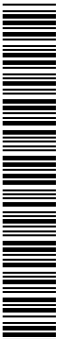
2 “(1) The use by any person of any document
3 designated as insecure by the Secretary of Homeland
4 Security (hereafter ‘the Secretary’) for entry into or
5 departure from the United States at any land, sea,
6 or air port of entry, is prohibited.

7 “(2) The use by any alien of any document des-
8 ignated as insecure by the Secretary to identify such
9 aliens for purposes of transportation of persons by
10 public or private conveyance in interstate commerce
11 is prohibited.

12 “(3) The Secretary may waive the prohibition
13 in paragraph (1) for citizens and legal permanent
14 residents of the United States whose identity has
15 been verified by a designation or endorsement of
16 such status on the identification document.

17 “(4) The Secretary shall, upon demand, pay-
18 ment of a fee, and verification of identity, issue to
19 any United States citizen a tamperproof counterfeit-
20 resistant secure identification card with biometric
21 identifiers. No government agency or private person
22 or entity may require any citizen to carry or produce
23 such card for identification purposes.”; and

24 (2) by amending subsection (c) to add at the
25 end the following: “The term ‘insecure document’ as

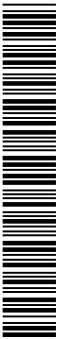


1 used in this section means a driver's license, identi-
2 fication card, or other document issued by a State
3 or any political subdivision thereof, or by a consular
4 representative or agent of a foreign government in
5 the United States, that may be issued to an alien
6 who, on the date of issuance of such document, is
7 unlawfully present in the United States after the ex-
8 piration of the period of stay authorized by the Sec-
9 retary or is present in the United States without
10 being admitted or paroled.”.

11 (b) The Secretary shall issue the list of insecure docu-
12 ments described in section 215(c), as amended, within 60
13 days of enactment of this Act. The Secretary shall update
14 such list semiannually thereafter, or upon application by
15 any State or foreign government that has demonstrated
16 to the satisfaction of the Secretary that a travel or identi-
17 fication document issued by such jurisdiction is no longer
18 insecure.

19 (c) The provisions of section 215(g)(1), as amended,
20 shall be effective 90 days after enactment of this Act.

21 (d) The provisions of section 215(g)(2), as amended,
22 shall be effective 120 days after enactment of this Act.



1 **SEC. 103. CONSULAR OFFICER INTERVIEWS OF ALL VISA**
2 **APPLICANTS.**

3 (a) IN GENERAL.—Section 221 (8 U.S.C. 1201) is
4 amended by adding at the end the following:

5 “(j) Prior to the issuance of an immigrant visa or
6 initial issuance of a nonimmigrant visa to any alien, the
7 consular officer shall require such alien to submit to an
8 in-person interview in accordance with such regulations as
9 may be prescribed.”.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to carry out the amend-
12 ment made by subsection (a) such sums as may be nec-
13 essary.

14 (c) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall be effective 6 months after the date
16 of enactment of this Act.

17 **SEC. 104. CUSTOMS AND BORDER PROTECTION AGENCY**
18 **STAFFING REPORT.**

19 In order to assess the status of current and projected
20 staffing, the Customs and Border Protection Agency will
21 submit to the Committees on Appropriations, the Senate
22 Committee on Judicial Affairs, and the House Select Com-
23 mittee on Homeland Security not later than July 1, a de-
24 tailed staffing plan including—

- 25 (1) actual onboard personnel for FY03;
26 (2) projected staffing for FY04;



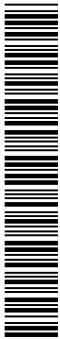
1 (3) positions authorized but vacant;

2 (4) full-time, part-time, and temporary fee-
3 funded positions; and

4 (5) staffing at each port of entry and border
5 area.

6 **SEC. 105. AIR INTERDICTION, OPERATIONS, MAINTENANCE,**
7 **AND PROCUREMENT.**

8 For necessary expenses for the operations, mainte-
9 nance, and procurement of aircraft, and other related
10 equipment of the air program, including operational train-
11 ing and mission-related travel, and rental payments for
12 facilities occupied by the air interdiction and demand re-
13 duction programs, the operations of which include the fol-
14 lowing: the interdiction of unlawful controlled substances
15 and other goods; the provision of support to Federal,
16 State, and administration of laws enforced by the Bureau
17 of Immigration and Customs Enforcement; and at the dis-
18 cretion of the Under Secretary for Border and Transpor-
19 tation Security, the provision of assistance to Federal,
20 State, and local agencies in other law enforcement and
21 emergency humanitarian efforts, \$10,000,000, to remain
22 available until expended.



1 **SEC. 106. USE OF ARMY AND AIR FORCE TO SECURE THE**
2 **BORDER.**

3 Section 1385 of title 18, United States Code, is
4 amended by inserting after “execute the laws” the fol-
5 lowing: “other than at or near a border of the United
6 States, or its functional equipment in order to prevent
7 aliens, terrorists, drug smugglers, and weapons of mass
8 destruction from entering the United States”.

9 **SEC. 107. INCREASED PENALTIES FOR ALIEN SMUGGLING.**

10 Section 274(a) of the Immigration and Nationality
11 Act (8 U.S.C. 1324(a)) is amended by adding at the end
12 the following:

13 “(4) In the case of a person who has brought
14 an alien into the United States in violation of this
15 subsection, the minimum sentence otherwise pro-
16 vided for shall be increased by 10 years.”.

17 **SEC. 108. ADMINISTRATIVE REMOVAL OF ALIEN TERROR-**
18 **ISTS.**

19 (a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is
20 amended—

21 (1) in the section heading, by striking “ALIENS
22 CONVICTED OF COMMITTING AGGRAVATED FELO-
23 NIES” and inserting “CERTAIN ALIENS”;

24 (2) in the heading of subsection (a), by insert-
25 ing “INSTITUTIONAL” before “REMOVAL”;



1 (3) in subsection (a)(1), by striking “241” each
2 place it appears and inserting “237”;

3 (4) by amending the heading of subsection (b)
4 to read as follows:

5 “(b) PROCEEDINGS FOR THE ADMINISTRATIVE RE-
6 MOVAL OF ALIENS.—”;

7 (5) by amending subsection (b)(1) to read as
8 follows:

9 “(1) The Secretary of Homeland Security
10 may—

11 “(A) in the case of an alien described in
12 paragraph (2), determine the deportability of
13 such alien under section 237(a)(2)(A)(iii) (re-
14 lating to conviction of an aggravated felony); or

15 “(B) in the case of an alien certified under
16 paragraph (2)(C), determine the deportability
17 of such alien under any provision of section
18 237,

19 and issue an order of removal pursuant to the proce-
20 dures set forth in this subsection or section 240.”;

21 (6) in subsection (b)(2)—

22 (A) in subparagraph (A), by striking “or”
23 at the end;

24 (B) in subparagraph (B), by striking the
25 period at the end and inserting “; or”; and



1 (C) by adding at the end the following:

2 “(C) has been certified by the Secretary of
3 Homeland Security, pursuant to paragraph (6),
4 which certification is not reviewable except as
5 provided in subsection (b)(7).”;

6 (7) by adding at the end of subsection (b) the
7 following:

8 “(6) CERTIFICATION.—The Secretary of Home-
9 land Security may certify an alien under this para-
10 graph if the Secretary has reasonable grounds to be-
11 lieve that the alien—

12 “(A) is described in section
13 212(a)(3)(A)(i), 212(a)(3)(A)(iii),
14 212(a)(3)(B), 237(a)(4)(A)(i),
15 237(a)(4)(A)(iii), or 237(a)(4)(B); or

16 “(B) is engaged in any other activity that
17 endangers the national security of the United
18 States.

19 “(7) NONDELEGATION.—The Secretary of
20 Homeland Security may delegate the authority pro-
21 vided under paragraph (6) only to the Deputy Sec-
22 retary of Homeland Security. The Deputy Secretary
23 may not delegate such authority.

24 “(8) JUDICIAL REVIEW.—Notwithstanding any
25 other provision of law, judicial review of an order



1 under paragraph (2)(C) shall be available only by a
2 filing in the United States Court of Appeals for the
3 District of Columbia.”;

4 (8) by striking the first subsection (c) and in-
5 serting the following:

6 “(c) PRESUMPTION OF REMOVABILITY.—An alien
7 convicted of an aggravated felony, or certified pursuant
8 to section 238(b)(2)(C), shall be conclusively presumed to
9 be removable from the United States.”; and

10 (9) by redesignating the second subsection (c)
11 (redesignated as such by section 671(b)(13) of the
12 Illegal Immigration Reform and Immigrant Respon-
13 sibility Act of 1996) as subsection (d).

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act and shall apply to aliens in removal proceedings
17 on or after such date.

18 **TITLE II—ALIEN BONDS**

19 **SEC. 201. MAINTENANCE OF STATUS/DEPARTURE BONDS** 20 **AND DELIVERY BONDS.**

21 (a) DEFINITIONS.—For purposes of this section:

22 (1)(A) MAINTENANCE OF STATUS/DEPARTURE
23 BOND.—The term “maintenance of status/departure
24 bond” (MS/D bond) means a written suretyship un-
25 dertaking entered into by an alien individual seeking



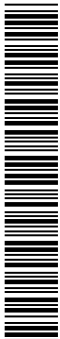
1 admission to the United States of America on a non-
2 immigrant visa, the performance of which is guaran-
3 teed by an acceptable surety on Federal bonds.

4 (B) DELIVERY BOND.—The term “delivery
5 bond” means a written suretyship undertaking for
6 the surrender of an individual against whom the De-
7 partment of Homeland Security has issued an order
8 to show cause or a notice to appear, the performance
9 of which is guaranteed by an acceptable surety on
10 Federal bonds.

11 (2) PRINCIPAL.—The term “principal” means
12 an individual who is the subject of a bond.

13 (3) SURETYSHIP UNDERTAKING.—The term
14 “suretyship undertaking” means a written agree-
15 ment, executed by a bonding agent on behalf of a
16 surety, which binds all parties to its certain terms
17 and conditions and which provides obligations for
18 the principal and the surety while under the bond
19 and penalties for forfeiture to ensure the obligations
20 of the principal and the surety under the agreement.

21 (4) BONDING AGENT.—The term “bonding
22 agent” means any individual properly licensed, ap-
23 proved, and appointed by power of attorney to exe-
24 cute or countersign surety bonds in connection with
25 any matter governed by the Immigration and Na-



1 tionality Act as amended (8 U.S.C. 1101, et seq.),
2 and who receives a premium for executing or
3 countersigning such surety bonds.

4 (5) SURETY.—The term “surety” means an en-
5 tity, as defined by, and that is in compliance with,
6 sections 9304 through 9308 of title 31, United
7 States Code, that agrees—

8 (A) to guarantee the performance, where
9 appropriate, of the principal under a bond;

10 (B) to perform the bond as required; and

11 (C) to pay the face amount of the bond as
12 a penalty for failure to perform.

13 (b) ISSUANCE OF BOND.—The Secretary of State
14 shall require applicants from the countries with the high-
15 est overstay rates, who have qualified for grants of B1,
16 B2, or F1 nonimmigrant visas, to post MS/D bonds before
17 their visas may be issued. Determination of the countries
18 with the highest overstay rates shall be made by the Sec-
19 retary of Homeland Security. The Secretary shall require
20 all individuals detained under section 236(a) (8 U.S.C.
21 1226) to post delivery bonds of not less than \$10,000, as
22 a condition of release from custody, unless an immigration
23 judge orders the alien released on his own recognizance.

24 (c) VALIDITY, AGENT NOT CO-OBLIGOR, EXPIRA-
25 TION, RENEWAL, AND CANCELLATION OF BONDS.—



1 (1) VALIDITY.—Maintenance of status/depart-
2 ture bond and delivery bond undertakings are valid
3 if such bonds—

4 (A) state the full, correct, and proper
5 name of the alien principal;

6 (B) state the amount of the bond;

7 (C) are guaranteed by a surety and
8 countersigned by an agent who is properly ap-
9 pointed;

10 (D) bond documents are properly executed;
11 and

12 (E) relevant bond documents are properly
13 filed with the Secretary of Homeland Security.

14 (2) BONDING AGENT NOT CO-OBLIGOR, PARTY,
15 OR GUARANTOR IN INDIVIDUAL CAPACITY, AND NO
16 REFUSAL IF ACCEPTABLE SURETY.—Section
17 9304(b) of title 31, United States Code, is amended
18 by adding at the end the following: “Notwith-
19 standing any other provision of law, no bonding
20 agent of a corporate surety shall be required to exe-
21 cute bonds as a co-obligor, party, or guarantor in an
22 individual capacity on bonds provided by the cor-
23 porate surety, nor shall a corporate surety bond be
24 refused if the corporate surety appears on the cur-
25 rent Treasury Department Circular 570 as a com-



1 pany holding a certificate of authority as an accept-
2 able surety on Federal bonds and attached to the
3 bond is a currently valid instrument showing the au-
4 thority of the bonding agent of the surety company
5 to execute the bond.”.

6 (3) EXPIRATION.—An MS/D bond undertaking
7 shall expire and the bond shall be canceled when—

8 (A) the principal, in compliance with the
9 conditions of his bond and nonimmigrant visa,
10 departs the United States prior to overstaying;

11 (B) the alien is surrendered, or surrenders
12 to the Department of Homeland Security for
13 removal before the Department issues a “notice
14 to surrender the alien” for removal; or

15 (C) the bond renewal premium has not
16 been paid and the alien has been surrendered to
17 the Department for removal.

18 (4) EXPIRATION.—A delivery bond undertaking
19 shall expire at the earliest of—

20 (A) 1 year from the date of issue;

21 (B) at the cancellation of the bond or sur-
22 render of the principal; or

23 (C) immediately upon nonpayment of the
24 renewal premium.



1 (5) RENEWAL.—Delivery bonds may be
2 renewed—

3 (A) annually, with payment of proper pre-
4 mium to the surety provided there has been no
5 breach of conditions, default, claim, or for-
6 feiture of the bond;

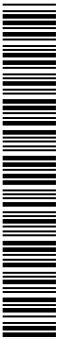
7 (B) if a delivery bond is not renewed the
8 bond remains in force until the alien is surren-
9 dered to the Department of Homeland Security
10 for removal. [When the alien is surrendered,
11 the Department must cause the bond to be can-
12 celed.]

13 (6) CANCELLATION.—Delivery bonds shall be
14 canceled and the surety exonerated—

15 (A) for nonrenewal after the alien has been
16 surrendered to the Department of Homeland
17 Security for removal;

18 (B) if the surety or bonding agent provides
19 reasonable evidence that there was misrepresen-
20 tation or fraud in the application for the bond;

21 (C) upon the death or incarceration of the
22 principal, or the inability of the surety to
23 produce the principal for medical reasons;



1 (D) if the principal is detained by any law
2 enforcement agency of any State, county, city,
3 or any political subdivision thereof;

4 (E) if it can be established that the alien
5 departed the United States of America for any
6 reason without permission of the Secretary of
7 Homeland Security, the surety, or the bonding
8 agent;

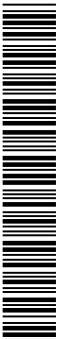
9 (F) if the foreign state of which the prin-
10 cipal is a national is designated pursuant to
11 section 244 of the Act (8 U.S.C. 1254a) after
12 the bond is posted; or

13 (G) if the principal is surrendered to the
14 Department of Homeland Security, removal by
15 the surety or the bonding agent.

16 (7) CANCELLATION.—MS/D bonds shall be can-
17 celed and the surety exonerated—

18 (A) when a bonded nonimmigrant departs
19 the United States for any reason;

20 (B) if the foreign state of which the prin-
21 cipal is a national is designated pursuant to
22 section 244 of the Act (8 U.S.C. 1254(a)) after
23 a bond has been posted; and



1 (C) when the principal is surrendered to
2 the Department of Homeland Security for re-
3 moval by the surety or the bonding agent.

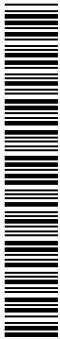
4 (8) EFFECT OF EXPIRATION OR CANCELLA-
5 TION.—When a maintenance of status/departure
6 bond expires without being immediately renewed, the
7 nonimmigrant status of the alien shall be revoked
8 immediately. However, the bond will not be canceled
9 until the principal is surrendered to the Department
10 of Homeland Security for removal.

11 (9) SURRENDER OF PRINCIPAL; FORFEITURE
12 OF BOND PREMIUM.—

13 (A) SURRENDER.—At any time, before a
14 breach of any of the bond conditions, if in the
15 opinion of the surety or bonding agent, the
16 principal becomes a flight risk, the principal
17 may be surrendered to the Department of
18 Homeland Security for removal.

19 (B) FORFEITURE OF BOND PREMIUM.—A
20 principal may be surrendered without the re-
21 turn of any bond premium if the principal—

22 (i) changes address without notifying
23 the surety, the bonding agent, and the Sec-
24 retary of Homeland Security in writing
25 prior to such change;



1 (ii) changes schools, or obtains new
2 employment without receiving prior written
3 authorization from the surety, the agent or
4 the Secretary;

5 (iii) hides or is concealed from a sur-
6 ety, a bonding agent, or the Secretary;

7 (iv) fails to report to the Secretary as
8 required at least annually; or

9 (v) violates the contract with the
10 bonding agent or surety, commits any act
11 that may lead to a breach of the bond, or
12 otherwise violates any other obligation or
13 condition of the visa or bond established by
14 the Secretary.

15 (10) CERTIFIED COPY OF BOND AND ARREST
16 WARRANT TO ACCOMPANY SURRENDER.—

17 (A) IN GENERAL.—A bonding agent or
18 surety desiring to surrender the principal—

19 (i) shall have the right to petition the
20 Secretary of Homeland Security or any
21 Federal court, without having to pay any
22 fees or court costs, for an arrest warrant
23 for the arrest of the principal;

24 (ii) shall forthwith be provided 2 cer-
25 tified copies each of the arrest warrant and



1 the bond undertaking, without having to
2 pay any fees or courts costs; and

3 (iii) shall have the right to pursue, ap-
4 prehend, detain, and surrender the prin-
5 cipal, together with certified copies of the
6 arrest warrant and the bond undertaking,
7 to any Department of Homeland Security
8 detention official or Department detention
9 facility or any detention facility authorized
10 to hold Federal detainees.

11 (B) EFFECTS OF DELIVERY.—Upon sur-
12 render of a principal under subparagraph
13 (A)(iii)—

14 (i) the official to whom the principal
15 is surrendered shall detain the principal in
16 custody and issue a written certificate of
17 surrender; and

18 (ii) the Secretary of Homeland Secu-
19 rity shall immediately exonerate the surety
20 from any further liability on the bond.

21 (11) FORM OF BOND.—Maintenance of status/
22 departure bonds and delivery bonds shall in all cases
23 state the following and be secured by a corporate
24 surety that is certified as an acceptable surety on



1 Federal bonds and whose name appears on the cur-
2 rent Treasury Department Circular 570:

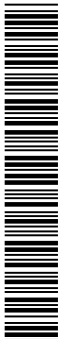
3 “(A) BREACH OF BOND; PROCEDURE, FOR-
4 FEITURE, NOTICE.—

5 “(i) If a principal violates any condi-
6 tions of the visa or the bond, or the prin-
7 cipal is or becomes subject to a final ad-
8 ministrative order of deportation or re-
9 moval, the Secretary of Homeland Security
10 shall—

11 “(I) immediately order the visa
12 issued to the principal canceled;

13 “(II) immediately issue a war-
14 rant for the principal’s arrest and
15 enter that arrest warrant into the Na-
16 tional Crime Information Center
17 (NCIC) computerized information
18 database;

19 “(III) order the bonding agent
20 and surety to take the principal into
21 custody and surrender the principal to
22 any one of 10 designated Department
23 of Homeland Security “turn-in” cen-
24 ters located nationwide in the areas of
25 greatest need, at any time of day dur-

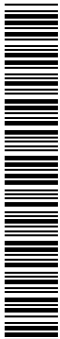


1 ing 15 months after mailing the ar-
2 rest warrant and the order to the
3 bonding agent and the surety as re-
4 quired by subparagraph (A)(i)(IV),
5 and immediately enter that order into
6 the National Crime Information Cen-
7 ter (NCIC) computerized information
8 database; and

9 “(IV) mail 2 certified copies each
10 of the arrest warrant issued pursuant
11 to subparagraph (A)(i)(II) and 2 cer-
12 tified copies each of the order issued
13 pursuant to subparagraph (A)(i)(III)
14 to only the bonding agent and surety
15 via certified mail return receipt to
16 their last known addresses.

17 “(ii) Bonding agents and sureties
18 shall immediately notify the Secretary of
19 Homeland Security of their changes of ad-
20 dress and/or telephone numbers.

21 “(iii) The Secretary of Homeland Se-
22 curity shall establish, disseminate to bond-
23 ing agents and sureties, and maintain on a
24 current basis a secure nationwide toll-free
25 list of telephone numbers of Department of



1 Homeland Security officials, including the
2 names of such officials, that bonding
3 agents, sureties, and their employees may
4 immediately contact at any time to discuss
5 and resolve any issue regarding any prin-
6 cipal or bond, to be known as ‘Points of
7 Contact’.

8 “(iv) A bonding agent or surety shall
9 have full and complete access, free of
10 charge, to any and all information, elec-
11 tronic or otherwise, in the care, custody,
12 and control of the United States Govern-
13 ment or any State or local government or
14 any subsidiary or police agency thereof re-
15 garding the principal that may be helpful
16 in complying with section 201 of the Vis-
17 itor Information and Security Account-
18 ability Act that the Secretary of Homeland
19 Security, by regulations subject to approval
20 by Congress, determines may be helpful in
21 locating or surrendering the principal. Be-
22 yond the principal, a bonding agent or sur-
23 ety shall not be required to disclose any in-
24 formation, including but not limited to the
25 arrest warrant and order, received from



1 any governmental source, any person, firm,
2 corporation, or other entity.

3 “(v) If the principal is later arrested,
4 detained, or otherwise located outside the
5 United States and the outlying possessions
6 of the United States (as defined in section
7 101(a) of the Immigration and Nationality
8 Act), the Secretary of Homeland Security
9 shall—

10 “(I) immediately order that the
11 surety is completely exonerated, and
12 the bond canceled; and

13 “(II) if the Secretary of Home-
14 land Security has issued an order
15 under clause (i), the surety may re-
16 quest, by written, properly filed mo-
17 tion, reinstatement of the bond. This
18 subclause may not be construed to
19 prevent the Secretary of Homeland
20 Security from revoking or resetting a
21 bond at a higher amount.

22 “(vi) The bonding agent or surety
23 must—

24 “(I) during the 15 months after
25 the date the arrest warrant and order



1 were mailed pursuant to subpara-
2 graph (A)(i)(IV) surrender the prin-
3 cipal one time; or

4 “(II)(aa) provide reasonable evi-
5 dence that producing the principal
6 was prevented—

7 “(aaa) by the principal’s ill-
8 ness or death;

9 “(bbb) because the principal
10 is detained in custody in any city,
11 State, country, or any political
12 subdivision thereof;

13 “(ccc) because the principal
14 has left the United States or its
15 outlying possessions (as defined
16 in section 101(a) of the Immigra-
17 tion and Nationality Act (8
18 U.S.C. 1101(a)); or

19 “(ddd) because required no-
20 tice was not given to the bonding
21 agent or surety; and

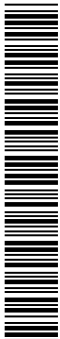
22 “(bb) establish by affidavit that
23 the inability to produce the principal
24 was not with the consent or conniv-
25 ance of the bonding agent or surety.



1 “(vii) If compliance occurs more than
2 15 months but no more than 18 months
3 after the mailing of the arrest warrant and
4 order to the bonding agent and the surety
5 required under subparagraph (A)(i)(IV),
6 an amount equal to 25 percent of the face
7 amount of the bond shall be assessed as a
8 penalty against the surety.

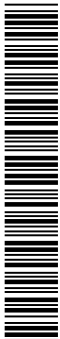
9 “(viii) If compliance occurs more than
10 18 months but no more than 21 months
11 after the mailing of the arrest warrant and
12 order to the bonding agent and the surety
13 required under subparagraph (A)(i)(IV),
14 an amount equal to 50 percent of the face
15 amount of the bond shall be assessed as a
16 penalty against the surety.

17 “(ix) If compliance occurs more than
18 21 months but no more than 24 months
19 after the mailing of the arrest warrant and
20 order to the bonding agent and the surety
21 required under subparagraph (A)(i)(IV),
22 an amount equal to 75 percent of the face
23 amount of the bond shall be assessed as a
24 penalty against the surety.



1 “(x) If compliance occurs 24 months
2 or more after the mailing of the arrest
3 warrant and order to the bonding agent
4 and the surety required under subpara-
5 graph (A)(i)(IV), an amount equal to 100
6 percent of the face amount of the bond
7 shall be assessed as a penalty against the
8 surety.

9 “(xi) If any surety surrenders any
10 principal to the Secretary of Homeland Se-
11 curity at any time and place after the pe-
12 riod for compliance has passed, the Sec-
13 retary of Homeland Security shall cause to
14 be issued to that surety an amount equal
15 to 50 percent of the face amount of the
16 bond: *Provided, however,* That if that sur-
17 ety owes any penalties on bonds to the
18 United States, the amount that surety
19 would otherwise receive shall be offset by
20 and applied as a credit against the amount
21 of penalties on bonds it owes the United
22 States, and then that surety shall receive
23 the remainder of the amount to which it is
24 entitled under this subparagraph, if any.



1 “(xii) All penalties assessed against a
2 surety on a bond, if any, shall be paid by
3 the surety no more than 27 months after
4 the mailing of the arrest warrant and
5 order to the bonding agent and the surety
6 required under subparagraph (A)(i)(IV).

7 “(B) The Secretary of Homeland Security
8 may waive penalties or extend the period for
9 payment or both, if—

10 “(i) a written request is filed with the
11 Secretary of Homeland Security; and

12 “(ii) the bonding agent or surety pro-
13 vides an affidavit that diligent efforts were
14 made to effect compliance of the principal.

15 “(C) COMPLIANCE; EXONERATION; LIMITA-
16 TION OF LIABILITY.—

17 “(i) COMPLIANCE.—A bonding agent
18 or surety shall have the absolute right to
19 locate, apprehend, arrest, detain, and sur-
20 render any principal, wherever he or she
21 may be found, who violates any of the
22 terms and conditions of his or her visa or
23 bond.



1 “(ii) EXONERATION.—Upon satisfying
2 any of the requirements of the bond, the
3 surety shall be completely exonerated.

4 “(iii) LIMITATION OF LIABILITY.—
5 Notwithstanding any other provision of
6 law, the total liability on any surety under-
7 taking shall not exceed the face amount of
8 the bond.”.

9 (d) EFFECTIVE DATE.—The provisions of this sec-
10 tion shall take effect on the date of the enactment of this
11 Act and shall apply to bonds and surety undertakings exe-
12 cuted before, on, or after the date of the enactment of
13 this Act.

14 **SEC. 202. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

15 (a) IN GENERAL.—Section 236(a)(2) is amended to
16 read as follows:

17 “(2) subject to such reasonable regulations as
18 the Secretary of Homeland Security may prescribe,
19 shall permit agents, servants, and employees of cor-
20 porate sureties to visit in person with individuals de-
21 tained by the Secretary of and, subject to section
22 241(a)(8), may release the alien on a delivery bond
23 of at least \$10,000, with security approved by the
24 Secretary, and containing conditions and procedures
25 prescribed by section 201 of the VISA Act and by



1 the Secretary, but the Secretary shall not release the
2 alien on or to his own recognizance unless an order
3 of an immigration judge expressly finds and states
4 in a signed order to release the alien to his own re-
5 cognizance that the alien is not a flight risk and is
6 not a threat to the United States”.

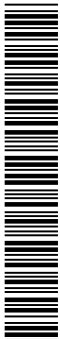
7 (b) REPEAL.—Section 286(r) of the Act (8 U.S.C.
8 1356(r)) is repealed in its entirety.

9 (c) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect on the date of the enact-
11 ment of this Act.

12 **SEC. 203. DETENTION OF ALIENS DELIVERED BY BONDS-**
13 **MEN.**

14 (a) IN GENERAL.—Section 241(a) (8 U.S.C.
15 1231(a)) is amended by adding at the end the following:

16 “(8) EFFECT OF PRODUCTION OF ALIEN BY
17 BONDSMAN.—Notwithstanding any other provision
18 of law, the Secretary of Homeland Security shall
19 take into custody any alien subject to a final order
20 of removal, and cancel any bond previously posted
21 for the alien, if the alien is produced within the pre-
22 scribed time limit by the obligor on the bond wheth-
23 er or not the Department of Homeland Security ac-
24 cepts custody of the alien. The obligor on the bond
25 shall be deemed to have substantially performed all



1 conditions imposed by the terms of the bond, and
2 shall be released from liability on the bond, if the
3 alien is produced within such time limit.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall take effect on the date of the enact-
6 ment of this Act and shall apply to all immigration bonds
7 posted before, on, or after the date of the enactment of
8 this Act.

